

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SCIORTINO HARDWOOD FLOORS

Employer

and

Case 4–RC–20096

METROPOLITAN REGIONAL COUNCIL OF
PHILADELPHIA AND VICINITY, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer was served with a Notice of Representation Hearing by first class mail on November 3, 2000, scheduling a hearing in this case for November 13, 2000. The Employer was also requested to submit a completed Commerce Questionnaire. Neither the Employer nor any representative of the Employer appeared at or participated in the hearing, and the Employer did not submit the Commerce Questionnaire.

The Employer, which has an office in Woodlyn, Pennsylvania, installs and refinishes hardwood floors, primarily for residential customers. The Employer does most of its work in Pennsylvania, but also performs some projects in New Jersey and Delaware. The Employer employs about 11 installation and refinishing mechanics and helpers.

¹ The Petitioner's name appears as amended at the hearing.

Employee Damien Lauginiger, a hardwood floor installation mechanic, has worked on at least 50 to 60 houses during his year of employment. He testified that the Employer obtains its materials from either a Home Depot outlet in Delaware or a store in Bellmawr, New Jersey. The Employer pays an average of about \$70 per box of hardwood, and a typical residential project requires about 10 to 15 boxes, although larger jobs may require as many as 40 or 50 boxes. Thus, using the average of Lauginiger's estimates, he performed 55 jobs using 12.5 boxes of hardwood costing \$70 per box, for a total cost to the Employer of \$48,125. This figure, of course, only includes hardwood purchased out of state for jobs on which Lauginiger worked, not jobs on which the Employer's other hardwood installers worked. Lauginiger further testified that the Employer is paid about \$1500 for an average job of installing a finished floor.² He earned about \$26,000 during the year he worked for the Employer, and he estimates that other employees earned about \$18,000 to \$20,000. He further testified that the Employer performs a job every month or two in Delaware.

Employee Joseph Chamielowski, a refinishing and installation mechanic, testified that he has performed at least 30 refinishing jobs during the last year, including one in Delaware and one in New Jersey. To refinish floors, the employees rough sand, fine sand and buff the floors, and then apply polyurethane or stain. Chamielowski testified that the Employer purchases its refinishing products and tools in Philadelphia. Chamielowski stated that he earned about \$15,000 to \$17,000 last year, and he believes most of the other employees earn about the same amount, although a few of them earn more.

Based on Lauginiger's testimony, I find that it is reasonable to infer that during the past year, the Employer purchased and received in the Commonwealth of Pennsylvania goods and materials valued in excess of \$50,000 that were obtained directly from points outside the Commonwealth of Pennsylvania. The Employer therefore meets the Board's direct inflow standard for asserting jurisdiction over a non-retail enterprise. Moreover, where an employer refuses, upon reasonable request by the Board, to provide evidence relevant to the Board's jurisdictional determination, only statutory jurisdiction need be proved to establish a sufficient basis for the assertion of jurisdiction. *Continental Packaging Corp.*, 327 NLRB No. 74 (1998); *Quality Motels*, 194 NLRB 1035, 1036 (1972). In this case, the record establishes that the Employer performed work in three states and purchased and received goods from outside Pennsylvania worth far more than a *de minimis* amount. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein. See *Major League Rodeo, Inc.*, 246 NLRB 743, 745 (1979); *Strand Theatre, K.I.M.B.Y.A.*, 235 NLRB 1500, 1501 (1978).

3. The Petitioner currently represents carpenters throughout the southeastern part of Pennsylvania and has collective-bargaining agreements with about 60 employers. Employees serve as officers for the Petitioner and otherwise participate in its activities. I therefore find that employees participate in the Petitioner's affairs and that it exists for the purpose of dealing with employers concerning employees' terms and conditions of employment. Moreover, the Board has found that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act in several cases. See e.g., *IBEW Local 98 (AIMM Inc.)*, 331 NLRB No. 156 (2000); *Eagle*

² The record does not indicate how much the Employer is paid for refinishing work.

Construction and Design, Inc. 329 NLRB No. 45 (1999). Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962).

4. The Petitioner is unaware of any history of collective bargaining for the Employer's employees, and there is no evidence of any contract bar. The Petitioner claims to represent certain employees of the Employer, and the Employer has not agreed to recognize the Petitioner as the exclusive representative of these employees. Accordingly, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks a unit of installation, sanding and finishing mechanics and helpers working out of the Employer's Woodlyn, Pennsylvania facility. There are about 11 employees in these categories. Jim Sciortino, whom the petition lists as the Employer's owner, and his brother Milio, serve as estimators for the Employer. The Employer also employs one secretary.

The Employer operates in two divisions, installation and refinishing. There are about five to seven employees in each division, and one employee, Chamiełowski, regularly performs work for both divisions. Each job is staffed by about one to four employees. The employees in both divisions report to the Employer's Woodlyn office each morning and then travel to their job sites. After installers complete their portion of a job, refinishing employees often work on the same projects about a week later. Occasionally employees from both divisions work on jobs together. Several employees have switched from one division to another during the course of their employment.

According to Lauginiger, Jim Sciortino is the Employer's only supervisor. At the job sites, the installers run the jobs themselves. The record indicates that estimator Milio Sciortino at times orders materials, but there is no other evidence as to his responsibilities or working conditions. The Petitioner contends that he should be excluded from the unit.

The installation and refinishing employees are properly included in the same unit. Thus, they regularly work on the same jobs, at times side by side. One employee works in both divisions, and others have transferred between divisions during their careers. They report to the same office each morning and are all supervised by Jim Sciortino. The helpers are properly included with the mechanics, as they work together on the same projects at the same time. I therefore find that the requested unit is appropriate. *Drexel Company*, 316 NLRB 1103 (1995); *Middle Eastern Bakery*, 243 NLRB 503, 505 (1979).

I shall exclude estimator Milio Sciortino, the Employer's owner's brother, from the unit because an estimator's responsibilities are very different from unit employees' responsibilities, and he does not perform work at the job sites with unit employees. I shall also exclude the secretary as an office clerical employee. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time installation, sanding and finishing mechanics and helpers employed by the Employer, excluding all other employees, office clerical employees, estimators, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,³ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Additionally, eligible are those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months immediately preceding the payroll period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.⁴ Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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³ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

⁴ *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), modified in 167 NLRB 1078 (1967).

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this decision an election eligibility list containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **December 8, 2000**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking, and the voting process itself, the names should be alphabetized (overall, or by department, etc.).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **December 15, 2000**.

Signed: December 1, 2000

at Philadelphia, PA

/s/ John D. Breese

JOHN D. BREESE

Acting Regional Director, Region Four

177-3900
240-0167-6700